

**WEST VALLEY CITY
BOARD OF ADJUSTMENT
MINUTES**

July 6, 2011

This meeting was called to order at 6:00 p.m. by Chairperson, Necia Christensen, at 3600 Constitution Boulevard, West Valley City, Utah.

WEST VALLEY CITY BOARD OF ADJUSTMENT MEMBERS

Sioeli Uluakiola, Russell Moore, Scott Spendlove, Mark Hales, Sandy Naegle and Necia Christensen

WEST VALLEY CITY PLANNING DIVISION STAFF

Steve Lehman and Karon Jensen

WEST VALLEY CITY LEGAL DEPARTMENT

Claire Gillmor

AUDIENCE:

Approximately eleven (11) people were in the audience.

B-4-2011

**Rodney Rupp - Non Conforming Use Request
3459 West 3800 South**

Nicholas Rupp, representing the property owner, is requesting a non conforming use determination for property located at 3459 West 3800 South. The property is approximately 1.5 acres in size and is not part of a recorded subdivision. The applicant is requesting that the Board determine the non conforming use of his property as outdoor storage.

BACKGROUND:

WEST VALLEY CITY GENERAL PLAN low density residential uses.

The subject property is located at 3459 West 3800 South. The following is a summation of a letter provided by the applicant and attached as part of the staff analysis. It will provide the basis for the applicants request that this property has been used as outdoor storage prior to and subsequent to West Valley City's incorporation.

The property was purchased by the Rupp family in 1940 as their primary residence and farming. Subsequent to that time, various parts of the original farm were sold off for residential development and Pioneer Elementary.

In the 1960's Salt Lake County Public Works began storing road maintenance and snow plow equipment on the property. At about this same time, neighboring residents began storing recreational vehicles as well. The County's storage of vehicles ended in 1983. However, the neighboring residents continued the R.V. storage.

At the time of West Valley City's incorporation, the subject property was zoned A-1. This zoning designation did not contain a provision that allowed outside storage. However, staff would like to point out that in 1963, this property was unzoned. Zoning in this location did not start until 1965 at which time the A-1 designation appeared. Given that the property was unzoned when outside storage began, the use was unregulated.

According to 1980 aerial photographs, the site does appear to contain various vehicles being stored outside. Evidence exists in 1997 and 2010 aerial photographs that show outside storage as well. Unfortunately, staff was unable to find photographs of this property earlier than 1997. The applicant has provided various statements from individuals who are familiar with this property. Staff has provided these statements as part of the staff analysis.

It is clear from historical data, aerial photographs and resident statements that outside storage has indeed been part of this property for many years. It is unclear, as to whether the outside storage has existed continuously since its inception.

ORDINANCE SUMMARY:

Section 7-18-106(1) and (3) of the West Valley City code reads:

(1) All matters regarding the non conforming use of building and land shall be determined by the Board. Upon application, after public hearing on the matter, the Board shall determine if the use or building is non-conforming with respect to current provisions of this Chapter.

(3) Non conforming use of Land. A non conforming use of land lawfully existing on the effective date of this Chapter may be continued provided such nonconforming use shall not be expanded or extended into any other open land, except as otherwise provided in this Chapter. If the nonconforming use is discontinued for a continuous period of more than one year it shall constitute an abandonment of the use and any future use of such land shall conform to the provisions of the zone in which it is located.

To summarize, the Board of Adjustment is being asked to determine whether the property in question has been used for outside storage subsequent to the City's incorporation.

Applicant:
Nicholas Rupp
3459 W. 3800 S.

Favored
Therman Mackay
SL County PubWorks

Favored
Arlan Marshall
SL County PubWorks

Favored
Thomas Neilson
Cottonwood Builders

Favored:
Terri Shaw

Favored
Jerree Coan
3577 W 3800 S

Neutral
Bruce Jensen
3831 S 3520 W

Favored
Todd Stevens
3787 S 3520 W

Steve Lehman presented the application. He explained that the property pre-dated the zoning and would have allowed the use because zoning did not exist at that time.

Mr. Spendlove questioned if the same policies would relate to all non-conforming use determinations and Mr. Lehman replied yes.

Mr. Lehman explained that there is a timeframe where the City did not know if there were vehicles being stored on the property. The inactive timeframe that is allowed for a non-conforming use is one year or less to maintain the status of the non-conforming use. Staff believes that this was an allowed use as Salt Lake County used the property for storage until 1983. The earliest available aerial photograph of the property is from approximately 1997.

Nicholas Rupp

Mr. Rupp reviewed information concerning the property with the Board of Adjustment and stated that he had previously submitted five signed statements that cover the time period from the 1960's to the 1990's. There is an aerial photograph available from the 1990's showing the vehicle storage use on the property. He indicated that he now has the affidavits from 1983 - 1985 providing the necessary documentation for that time period and distributed copies to the Board of Adjustment. Mr. Rupp also reviewed information that he submitted for the Board of Adjustment's packets:

Existing use: The 1.48 acre parcel at 3459 W. 3800 S. is used partially as a residence and partially as outdoor storage for large vehicles.

Historical use: The parcel was purchased as part of a larger block of land, by Alden Rupp in 1940. The Rupp family lived in the residence on the parcel and farmed sugar beets (as well as raised horses, chickens, cattle, and pigs) on the remaining acreage.

In the mid 1960's, Rupp ceased farming operations and began selling off portions of the farmland, which would become the surrounding subdivisions and Pioneer Elementary.

Beginning in the late 60's, Salt Lake County Public Works stored large vehicles, such as road maintenance and snow plow equipment, on Rupp's remaining land. This continued through the 1970's, during which time neighbors residing in the new subdivisions began storing their recreational vehicles on the property as well.

Salt Lake County ceased actively using the property for large vehicle storage in 1983 (though some equipment remains there to this day), but neighbors continued storing their RVs there.

In 2003, Cottonwood Builders, acting as contractor for West Valley City on the 3800 South improvement project (adding curb, gutter, and sidewalks), stored their road construction equipment on the property.

Outdoor storage for large vehicles continued until April 2011 when West Valley City Code Enforcement cited the Rupp family for violating the R-1-8 zone, ending a use that had existed for at least 40 years.

Evidence (attached):

Statement 1: Signed statement from Therman Mackay, Salt Lake County public works employee from the 1950's to the 1980's, testifying to the large vehicle storage on the property throughout those years.

Statement 2: Signed statement from Arlan Marshall, Salt Lake County public works employee from 1973 to 2010, testifying to large vehicle storage on the property from the 1970's to 1980's.

Statement 3: Signed statement from Thomas Neilson, President of Cottonwood Builders, testifying that his company, acting as a contractor for the West Valley City public works department, used the property to store equipment for the 3800 South improvement project in 2003 and 2004.

Statement 4: Signed statement from Terri Shaw, who stored a camper on the property from the mid-1980's to the early 1990's.

Image 1: A 1978 snapshot showing road construction equipment and a wrecked vehicle stored on the property.

Image 2: A 1979 aerial photograph of the parcel, from Salt Lake County Flood Control, showing a number of RV's on the property.

Image 3: A 2011 photograph showing a Salt Lake County snowplow still on the property. This particular item has been there since the early 1970's; it was moved to surplus and abandoned by the County in the 1980's.

In Summary: the parcel in question has been used as outdoor storage for large vehicles (both RV's and construction equipment) since well before the current zoning or even West Valley City was in existence.

Jerree Coan

Ms. Coan stated that she had a petition containing signatures from the surrounding neighborhood all acknowledging they are in favor of the applicant's proposal to continue the vehicle storage use on the property and submitted the petition to the Board of Adjustment for their review.

Bruce Jensen

Mr. Jensen stated that presently his position is neutral concerning the applicant's request for a non-conforming use determination and noted that he had the following questions/concerns: The immediate neighbor's home is currently vacant and abuts against the applicant's property and expressed concerns regarding noise from loud trucks coming and going. From my home, I have a view of the outside storage with construction barriers. My concern is if the request is approved and the property transfers ownership, would the non-conforming use status remain with the property? Mr. Lehman responded that the non-conforming use remains with the land and would transfer with the property unless the use was abandoned for more than one year.

Mr. Jensen recommended adding a stipulation for the applicant to be responsible for maintaining greenery to help block the view and improve the aesthetics. Mr. Lehman explained that the applicant is required to have a business license and suggested the Board of Adjustment could choose to add a stipulation for improvements to help mitigate the use

with landscaping, noise reduction, etc. and must also meet with all code requirements. If the Board of Adjustment approves the use, they could include in their motion a restriction to only allow the outside vehicle storage in the area that is illustrated in the aerial photograph.

Mr. Lehman mentioned that he had received a phone call from Robin Haslam who lives near 3800 South indicating that he would prefer not to see the outside storage use approved.

Mr. Rupp acknowledged that in 1992 the storage use was limited to the western portion of the site and noted that he would be glad to provide additional greenery to help improve aesthetics.

Mr. Moore questioned if the applicant currently resides on the property. Mr. Rupp responded that he uses the property as his primary residence.

Todd Stevens

Mr. Stevens stated that he has rented storage space from Mr. Rupp since early 2000 for his trailer. He indicated that storing the trailer at this location has been very convenient and noted that he doesn't have any problem with the existing storage use on the property.

Discussion:

Mr. Spendlove said that he believes the burden of proof has been met by the applicant. The Board agreed and discussed the suggestion of limiting the scope for vehicle storage on the property.

Mr. Moore acknowledged that he has personal knowledge regarding the continuous use of vehicle storage on the property and stated that the request should be approved.

Mr. Uluakiola suggested the applicant be asked to maintain the lot to the satisfaction of the neighbors.

There being no further discussion regarding this application, Chairperson Christensen called for a motion.

Motion

Russell Moore stated I move that we approve the non-conforming use request for outside vehicle storage regarding application B-4-2011, based on the affidavits, letters, and evidence provided by Mr. Rupp.

Sandy Naegle seconded the motion.

A roll call was taken.

Mr. Uluakiola	yes
Mr. Moore	yes
Mr. Spendlove	yes
Ms. Naegle	yes
Chairperson Christensen	yes

Motion carries – all in favor

Approved - B-4-2011- Unanimous

B-5-2011
Patrick Ring
6128 West Cherry Spring Court
R-1-8 Zone

Mr. Todd Gardner, representing the property owner, has filed a request with the West Valley City Board of Adjustment seeking a variance from Section 7-6-305(1) of the West Valley City Code. This section requires that the minimum side yard setback on the garage side be 10 feet. The applicant is requesting variances of 8 feet in order to allow a previously constructed shed to remain 2 feet from property line.

BACKGROUND:

WEST VALLEY CITY GENERAL PLAN recommends low density residential land uses.

- ☐ The subject property is known as lot 374 of the Diamond Summit Phase 3 Subdivision. This subdivision was recorded with the Salt Lake County Recorder's Office in 1996 and is currently zoned R-1-8.
- ☐ The Diamond Summit Subdivision was annexed into West Valley City in April 1996. The subdivision was rezoned from R-1-7 to R-1-8 prior to its annexation. It was understood that all setback standards for new homes would be constructed in accordance with West Valley City regulations.

- ☐ West Valley City issued a building permit in November 1996. The original building permit did not include the existing shed which is the topic of this application and presently in violation of City code.
- ☐ The applicant was recently notified that the location of the shed is in violation of City setback standards. The property owner's representative visited with City staff to determine the best approach regarding the violation. Staff discussed the variance option and referenced the 5 criteria. Staff did inform Mr. Gardner that the property is without any hardship and that it would be challenging for the Board to find in favor of all criteria as outlined in State Law.
- ☐ The existing shed is slightly over 2 feet from property line. The variance needed in this case is 8 feet. The proximity of the shed to the home would be an issue that would need to be resolved with the Building Division should the Board grant approval for the variance request.
- ☐ The property in question is uniform with others in this subdivision. The depth of the lot is approximately 117 feet with a width of 78 feet. Although this request is for an existing shed, the property does have sufficient depth to relocate or rebuild the shed if the variance is denied.

Steve Lehman presented the application.

Agent:

Todd Gardner
4520 Highland Dr.

Property Owner

Patrick Ring
5780 S. Wasatch Blvd.

Todd Gardner

Mr. Gardner indicated he is representing the property owner, Patrick Ring. The applicant has gone to great expense to match the building materials on the shed to the existing home. The structure is built in excess of code requirements and would be a financial hardship for the applicant to try and meet the ordinance. The applicant previously consulted with a contractor and decided that it would be too costly to try and move the structure. None of the neighbors have expressed any opposition to the structure and have in fact commented on how attractive the shed is stating that it enhances the overall aesthetics of the neighborhood. Mr. Ring was recently notified that the shed is in violation of City setback standards and the City's violation notice has kept potential buyers from purchasing the home.

Mr. Gardner expressed concern stating that the shed was built in 1997 and over 15 years have past since the structure was built. The applicants received a violation notice in March of 2011. He noted that there are several other homes in the area that have similar

storage sheds encroaching the setback and those structures are clearly not as high quality as the applicant's shed. I believe that if the City is going to enforce a zoning violation, the violation should be enforced in the first few years of the code violation and not 15 years later, especially since there hasn't been any opposition or complaints by neighbors during that time frame.

Patrick Ring

The applicant, Mr. Ring, indicated that he had met with City staff several times and thought that he was in compliance with the ordinance before he began construction on the structure. He stated that the City had stamped off on his plans, however after an extensive search he was unable to locate the building plans. Mr. Ring remarked that there are no complaints associated with the structure and neighbors have commented that it was an attractive structure and have not expressed any concerns about the shed.

Mr. Lehman responded unfortunately there is no record of a building permit being issued or of any stamped plans by the City. He explained that when planning and zoning or building inspection staff speaks to a resident about proposed building plans, they are instructed to apply for and obtain a building permit before starting any construction on a project.

Todd Gardner

Mr. Gardner reviewed the information that he had submitted for the packets with the Board of Adjustment:

The house was built in approximately 1994 prior to the West Valley Annex in 1997. The storage building was also built prior to 1997 to the best of the owner's recollection. It is a designed structure not unlike that of the house and was carefully constructed using top grade materials. It is built in excess of code requirements. The structure itself is 23' x 12' and 13'8" at the highest point.

Enforcement of the code as is now being enforced by West Valley City would cause an unreasonable hardship. Although, it may be a technical violation of the zoning ordinance there are clearly other homes in the area that have a similar storage unit that encroaches the set back, although none seem to be of the quality of this building. Further, the property which is currently for sale is enhanced by a storage unit of this caliber.

Over 15 years have passed since the storage unit was built and nothing was said by the City until March of 2011. The homeowners have consulted with a contractor about moving the structure, but it is too large to move and too costly. The only alternative would be a tear down. Granting the variance would allow a proper sale of this property to occur especially where all active potential buyers are considering this property to include such a nice storage unit.

The General Plan, which to the homeowner's knowledge came into affect after the building of this storage building, would not be contrary to public interest since the Plan

post dates the shed. A zoning ordinance should be forward looking or at least give substantial notice of a rule change so that the property owners can be compensated fairly if a code change is mandated after the fact. The fact that several years have transpired and the City did not enforce potential rights should be looked as favorable to the landowner not the City otherwise it amounts to a public taking.

Chairperson Christensen asked the applicant if he could provide and discuss in more detail the five variance criteria.

Mr. Gardner reviewed the variance criteria with the Board of Adjustment.

1. Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance.

Although, it may be a technical violation of the zoning ordinance there are clearly other homes in the area that have a similar storage unit that encroaches the set back, although none seem to be of the quality of this building. Further, the property which is currently for sale is enhanced by a storage unit of this caliber.

Mr. Gardner commented that there is also a financial hardship. The Board explained that a financial hardship cannot be considered by the Board of Adjustment as a hardship.

Mr. Ring commented that he had spoken to City staff before starting construction on the shed.

Mr. Gardner said that the applicant is taking steps and trying his best to do the right thing. I believe with the significant passage of time over the years it has become a substantial property right in lieu of the shed existing on the property without complaints or any violation notices until recently.

2. There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district.

The special circumstance is that this is a very large lot. The house was built in approximately 1994 prior to the West Valley Annex in 1997 and the storage building was built prior to 1997 to the best of the owner's recollection.

3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district.

Granting the variance would allow a proper sale of the property to occur especially where all active potential buyers are considering this property to include this quality storage unit.

4. The variance will not substantially affect the general plan and will not be contrary to the public interest.

The variance would not be contrary to public interest since the Plan post dates the shed.

5. The spirit of the zoning ordinance is observed and substantial justice done.

The property which is currently for sale is enhanced by a storage unit of this caliber. Also, there has been no opposition to the structure.

Discussion:

Chairperson Christenen explained that every one of the five variance criteria must be met in order to approve a variance request. She also noted that financial hardships cannot be considered by the Board.

Mr. Spendlove explained that the hardship must be unique to the property such as a hillside, shape, size, etc. and noted that this is a very typical lot in the subdivision.

The Board of Adjustment reviewed the five variance criteria.

CRITERIA DISCUSSION:

1. **Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance.**

Mr Spendlove said the applicant does not meet the first criteria or the third criteria. Mr. Moore suggested the hardship might be that the applicant is unable sell the property with this zoning violation.

2. **There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district.**

Mr Spendlove commented that he did not see anything unique about the property. Mrs. Christensen agreed noting this is a very typical lot and there are not any unusual attributes associated with the property.

3. **Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district.**

Mrs Christensen stated that she believes that the location is the substantial property right.

4. The variance will not substantially affect the general plan and will not be contrary to the public interest.

Ms. Naegle commented there is a valid reason that the ordinance requires a 10' setback and that is to have a break between the neighboring properties. If the Board granted the 2' variance request, the neighbors would be impacted significantly.

5. The spirit of the zoning ordinance is observed and substantial justice done.

Mrs Christensen acknowledged that the storage building has been there for a very long time and has not received any complaints or opposition from the neighbors.

Mr. Hales indicated that there is no statute of limitations that allows a violation to be grandfathered in. He noted that the structure is attractive and seems to be well constructed.

Mr. Moore stated that the zoning ordinances were in place when the structure was built. There has not been any supporting evidence that the shed has been approved and/or stamped by the City.

Ms. Naegle said that the building structure is very attractive. She explained that the Board of Adjustment has very little discretion with approving variances and noted that all of the five variance criteria must be met. This variance application is quite cut and dry where sometimes a non-conforming use has more flexibility.

The Board of Adjustment indicated that it is important to note that in the applicant's discussion the criteria were not discussed in detail. The burden of proof to meet all of the five variance criteria has not been met by applicant and the Board of Adjustment has an obligation to deny the variance request.

Mr. Uluakiola explained that the Board would need evidence from the applicant that the plans were stamped and approved 17 years ago and that evidence has not been made available.

There being no further discussion regarding this application, Chairperson Christensen called for a motion.

Motion

Mr. Spendlove stated I move that we deny the variance request by Todd Gardner, for application, B-5-2011, based upon the fact that the applicant has not met the five variance criteria.

Mr. Moore seconded the motion.

A roll call was taken.

Mr. Uluakiola	yes
Mr. Moore	yes
Mr. Spendlove	yes
Ms. Naegle	yes
Chairperson Christensen	yes

Motion carries – unanimous

Denied - B-5-2011- Unanimous

OTHER

The minutes from **April 6, 2011** were **approved**.

There being no further business the meeting adjourned at 7:25 p.m.

Karon Jensen, Administrative Assistant